

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-906-2005 (O&M)

Date of decision: 09.03.2023

Sumeet Singh Kohli

...Appellant(s)

Vs.

Sukhdev Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sunil Chadha, Senior Advocate with
Ms. Devyani Sharma, Advocate for the appellant.

Mr. Rahul Pathania, Advocate for
Mr. R.C. Kapoor, Advocate for respondent No.3.

NIDHI GUPTA, J.

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.3,20,000/- awarded by Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as "the learned Tribunal") vide Award dated 15.10.2004 passed in MACT Case No.48 of 2002.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that the appellant had suffered injuries in a motor vehicular accident that took place on 18.03.2002 due to rash and negligent driving of bus bearing registration No.PB-07E-2299 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1/driver, owned by respondent No.2, and insured by respondent No.3. Learned Tribunal awarded compensation as noted above along with interest @ 6% per annum from the date of Award till its actual realization.

Respondents were held jointly and severally liable to pay the amount of compensation.

3. This Court vide order dated 05.07.2022 dispensed with service of respondents No.1 and 2 herein.

4. Learned counsel for the appellant seeks enhancement of compensation inter alia on the ground:

a) that as a result of the accident in question, the appellant has suffered 75% permanent disability due to which he is unable to do his daily jobs;

b) that the appellant was a young boy of 20 years of age at the time of accident, and due to injuries suffered by him in the accident in question, he is unable to walk properly for the rest of his life, and has become crippled and permanently disabled, and therefore, amount of only Rs.13,000/- granted by learned Tribunal towards pain & suffering, loss of enjoyment of life & amenities, is abysmally low;

c) that only Rs.20,000/- has been granted on account of disability which is on lower side;

d) that the learned Tribunal is in error in ignoring the fact that prior to the accident, the appellant was working with M/s Sigma Enterprises Limited, Jalandhar and earning Rs.7,000/- per month;

e) that in accordance with law laid down by the Hon'ble Supreme Court, multiplier of 18 has to be applied.

5. Per contra, it is submitted by learned counsel for respondent No.3;

a) that in pursuance to order dated 01.05.2019 passed by this Court, report dated 23.05.2019 of Civil Surgeon, Jalandhar has been received, as per which the appellant is shown to have suffered permanent disability of 75% qua his right lower limb. It is submitted that accordingly, functional disability qua the whole body should be assessed as only 37.5%;

b) it is very fairly admitted that in conformity with the law laid down by the Hon'ble Supreme Court, multiplier of 18 has to be applied;

c) as regards income of the appellant, learned counsel refers to findings of learned Tribunal in Para 28 of the impugned Award and submits that the appellant had failed to produce any record whatsoever to prove his employment with M/s Sigma Enterprises Limited, Jalandhar. Even no record showing payment of any salary or even any appointment of the appellant was placed on record.

6. No other argument is raised on behalf of the parties.

7. I have heard learned counsel for the parties.

8. Perusal of record of the case shows that:

a) As per PW2, appellant remained hospitalized w.e.f. 18.03.2002 to 21.03.2002. By-pass grafting of right leg was done;

b) As per PW1, appellant remained hospitalized from 11.04.2002 till 16.05.2002;

c) It has further come on record that right leg of the appellant had sustained multiple fractures because of which it was operated upon. Due to the injuries suffered by the appellant, his right leg had shortened by two inches;

d) PW5-Dr.Harpeet Singh has deposed that the appellant remained admitted in hospital from 12.07.2002 to 29.07.2002 and again from 01.09.2002 to 07.09.2002. He has further deposed that the appellant cannot walk without crutches and his right leg cannot bear any weight at all. He has further deposed that permanent disability of shortening of leg of the appellant would remain for entire life even after full curing and treatment. He has also deposed that appellant will not be able to bend his right leg at all;

e) Moreover, it is undisputedly on record that the appellant has suffered permanent disability to the extent of 75% and functional disability of 37.5%. In these circumstances, I find the amount of Rs.20,000/- awarded by learned Tribunal on account of permanent disability to be very low. Said amount is enhanced to Rs.50,000/-. Amount of Rs. 13,000/- granted under the head of pain & suffering is also increased to Rs.50,000/-;

f) Appellant has been unable to prove his income as Rs. 7000/- on record. Admittedly, no appointment letter of the appellant to prove his appointment with M/s Sigma Enterprises was placed on record. Though salary certificate Ex.P-14 was produced, however, no record of the employer-company showing payment of salary to the appellant was

produced. Accordingly, notional income of the appellant will be taken as per Minimum Wage notification applicable at the relevant time. Minimum wages in Punjab in 2002 are to be considered to be same as in Haryana which was of Rs.2,310/- per month under skilled upper category. Thus, notional income of the deceased is taken as Rs. 2310/- per month;

g) As per judgment of Hon’ble Supreme Court in ***Civil Appeal No.1329 of 2017 titled as “Sandeep Khanuja Vs. Atul Dande & Another”*** it has been held that even in injury cases, multiplier has to be applied. As appellant was 20 years old at time of accident, therefore, as per law, multiplier of 18 has to be applied;

h) Appellant is stated to be now settled in Australia. It is not informed whether appellant is now married or not, accordingly, nothing is granted by way of marriage prospects;

i) Accordingly, compensation payable to the appellant is re-worked as follows:

HEADS	MACT	AMOUNT
Income	NIL	Rs.2310/-
Annual income	NIL	Rs. 27,720/-
Multiplier	NIL	18x27,720=Rs.4,98,960/-
Medical expenses	Rs.2,86,972/-	Rs.2,86,972/-
Pain and suffering	Rs.13,000/-	Rs. 50,000/-
Attendant charges	NIL	Rs.10,000/-
On account of disability	Rs. 20,000/-	Rs. 1,50,000/- (@ Rs. 2000/- per percent of disability.)
Transportation	NIL	Rs. 10,000/-
Total	Rs. 3,20,000/-	Rs. 10,05,932/- rounded off to Rs. 10,06,000/-
Enhanced compensation		Rs. 6,86,000/-

9. Appellant is further held entitled to interest @ 6% on enhanced compensation from date of filing claim petition till realization.

10. Accordingly, present appeal stands **allowed**, in above said terms.

11. Pending application(s) if any also stand(s) disposed of.

09.03.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No